

EMPLOYMENT LAW ALERT



MARC • LAW

Accommodating Marijuana Use Under New Jersey Law

In response to a series of questions received from clients, MARC's employment group wanted to provide an update on the legal climate as it relates to an employee's use of medical marijuana in New Jersey.

Under the New Jersey Compassionate Use Medical Marijuana Act ("NJCUUMA"), medical marijuana is decriminalized and can be prescribed to treat a variety of medical disorders (including seizure disorder, PTSD, glaucoma, and cancer). The NJCUUMA, however, does not contain any employment-related protections for licensed users of medical marijuana and the drug remains illegal under federal law. So what does an employer have to do to accommodate an employee's use of medical marijuana? According to recent New Jersey case law, nothing.

In the recent case of *Cotto v. Ardagh Glass Packing, Inc.*, a federal district judge sitting in New Jersey found that the New Jersey Law Against Discrimination "does not require an employer to accommodate an employee's use of medical marijuana." In that case, the plaintiff claimed that he was prescribed medical marijuana to treat neck and back pain and that his employer engaged in discriminatory practices when it required him to pass a drug test before returning to work after a 2016 workplace injury. The *Cotto* court ultimately held that "New Jersey Law does not require private employers to waive drug tests for users of medical marijuana" and therefore dismissed the plaintiff's case in its entirety.

Cotto is no doubt the first of many and employers should be cautious when handling these situations, as disability discrimination remains illegal under both State and Federal law. That is, employers may not discriminate against an employee because of an underlying disability (even if that disability requires the use of medical marijuana) and employers must accommodate a disability when it is possible to do so. *Cotto* does not change this well-settled obligation and the distinction between being required to accommodate a disability but not the medical marijuana used to treat the same can be a complex and risky dilemma.

Because of the changing legal climate, it is important for employers to be careful when confronted with these situations, as the legal consequences of failing to do so can be substantial. Please contact the MARC employment group if you have any questions or if you would like guidance on how to handle a current or prospective employee's use of medical marijuana.

ABOUT MARC'S EMPLOYMENT LAW PRACTICE

The maze-like rules, regulations and laws governing labor and employment can be a minefield for employers. MARC's extensive litigation experience in all types of employment-related claims helps clients defend against lawsuits early and forcefully. Our successful representations run the gamut from trial verdicts on behalf of Fortune 50 corporations to dismissal of claims before administrative agencies. We investigate complaints from their inception and work with in-house counsel, management and corporate employees to aggressively defend our clients.

[Read more...](#)

Florham Park, NJ: 973-635-6300 New York, NY: 212-308-0070

www.marc.law

This document has been provided for informational purposes only and is not intended and should not be construed to constitute legal advice. Please consult your attorneys in connection with any fact-specific situation under federal law and the applicable state or local laws that may impose additional obligations on you and your company.